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8 Attorneys for Plaintiff United States of America

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA
12 PHOENIX DIVISION

13 UNITED STATES OF AMERICA,
14
15 Plaintiff,

16 v.

17 MOTOROLA INC.;
18 SMI HOLDING LLC d/b/a SIEMENS
19 CORPORATION; and
20 SMITH KLINE BEECHAM
CORPORATION d/b/a
GLAXOSMITHKLINE,

21 Defendants.

CIVIL ACTION NO.

22
23
24 **STIPULATION AND ORDER**

25 Whereas, Plaintiff United States of America, on behalf of the United States
26 Environmental Protection Agency ("EPA"), has filed a complaint in this action
("Complaint") concurrently with this Stipulation and Order, against Defendants Motorola

1 Inc., Siemens Corporation and GlaxoSmithKline ("Defendants"), seeking penalties
2 pursuant to Sections 122(l) and 109(c) of the Comprehensive Environmental Response,
3 Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9622(l), 9609(c), for alleged
4 violation of the terms of a consent decree entered by this Court on June 6, 2003, in the
5 matter entitled *United States of America, et al., v. Motorola Inc., et al.*, Civil No. CV 91-
6 1835-PHX-FJM.

7 Whereas, Defendants do not admit any issue of law or fact and deny liability to the
8 United States arising out of the transactions or occurrences alleged in the Complaint.

9 Whereas, the United States and the Defendants (the "Parties") agree that settlement
10 of the United States' claims against Defendants, without further litigation, is in the public
11 interest.

12 Whereas, the Parties further agree that the Court's approval of this Stipulation and
13 Order ("Stipulation") is an appropriate means of resolving the claims in this action.

14 Now Therefore, before the taking of any testimony, without adjudication or
15 admission of any issue of fact or law, except as provided in Paragraph 1, below, and with
16 the consent of the Parties, It Is Hereby Adjudged, Ordered and Decreed as follows:

17 1. This Court has jurisdiction over the parties to, and the subject matter of,
18 this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 109(c) of CERCLA,
19 42 U.S.C. § 9609(c). Venue is proper in this district pursuant to 42 U.S.C. §§ 9609(c) and
20 28 U.S.C. § 1391(b) and (c) because at least one Defendant resides and has its principal
21 place of business within this district and because the claims arose, and the alleged
22 violations occurred, within this district. Defendants waive any and all objections they may
23 have to the Court's jurisdiction, waive service of process in accordance with the
24 requirements set forth in the Federal Rules of Civil Procedure, and, for purposes of this
25 Stipulation and Order, submit to the Court's jurisdiction.

26 2. Defendants collectively shall pay, within 30 days of the date this

1 Stipulation and Order is entered by the Court, a civil penalty to the United States in the
2 amount of \$500,000.00, plus an additional sum for Interest on that amount calculated from
3 the date on which this Stipulation and Order is entered by the Court through the date of
4 civil penalty payment. This obligation is joint and several. "Interest" shall mean interest at
5 the statutory judgment rate established by 28 U.S.C. § 1961. The applicable rate of interest
6 shall be the rate in effect at the time the interest accrues.

7 3. The payment shall be made by FedWire Electronic Funds Transfer
8 ("EFT") in accordance with current electronic funds transfer procedures, referencing DOJ
9 Case No. 90-11-2-413/7. The payment shall be made in accordance with instructions
10 provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for
11 the District of Arizona. Any EFTs received at the DOJ lockbox bank after 4:00 p.m.
12 Eastern Time will be credited on the next business day. Within five business days of
13 payment, Defendants shall provide written notice of payment and a copy of any transmittal
14 documentation to DOJ, EPA, and the U.S. Attorney's Office at the addresses below.

15 As to DOJ:

16 Chief, Environmental Enforcement Section
17 Environment and Natural Resources Division
18 U.S. Department of Justice
19 P.O. Box 7611
20 Washington, D.C. 20044-7611
21 Re: DJ No. 90-11-2-413/7

22 As to EPA:

23 Jamey Watt
24 U.S. Environmental Protection Agency
25 Region IX
26 75 Hawthorne Street
San Francisco, CA 94105

1 As to the U.S. Attorney's Office:

Ronald Gallegos
Chief, Civil Section
U.S. Attorney, District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

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6 4. If the civil penalty is not fully paid when due, Defendants shall pay a
7 stipulated penalty of \$1000 per day for each day that the payment is delayed beyond the
8 due date. Interest shall continue to accrue on the unpaid balance. Stipulated penalties are
9 due and payable within 30 days of the date of the demand for payment of the penalties by
10 the United States. Penalties shall accrue as provided in this Paragraph regardless of
11 whether the United States has notified Defendants of the violation, or made a demand for
12 payment, but need only be paid upon demand. All penalties shall begin to accrue on the
13 day after payment is due and shall continue to accrue through the date of payment.
14
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16 5. Defendants shall not deduct any penalties or stipulated penalties paid
17 under this Stipulation in calculating its federal income tax.
18

19 6. The payment by Defendants under this Stipulation shall constitute full
20 settlement and satisfaction of the claims asserted by the United States in the
21 above-captioned action, as alleged in the Complaint.
22

23 7. This Stipulation is not and shall not be deemed an admission by
24 Defendants of violation of any statute or law or wrongdoing of any kind, and Defendants
25 expressly deny any violation or wrongdoing. Further, this Stipulation is not and shall not
26 be deemed an admission or finding that any claims by any party against the other, which

1 has been raised or might be raised, are or would be in any way valid or meritorious. The
2 Parties acknowledge that this Stipulation is a compromise of disputed claims.
3

4 8. The United States reserves, and this Stipulation is without prejudice to, all
5 rights against Defendants with respect to all other matters not asserted by the United States
6 in the Complaint, including, but not limited to, any criminal liability.
7

8 9. Nothing in this Stipulation shall be construed to release Defendants or
9 their agents, successors, or assigns from their respective obligations to comply with the
10 Consent Decree, or any applicable Federal, State, or local law, regulation, or permit.
11 Nothing contained herein shall be construed to prevent or limit the United States' rights to
12 seek penalties or injunctive relief for any violations of CERCLA other than those expressly
13 alleged in the Complaint.
14

15 10. This Stipulation shall constitute an enforceable judgment for purposes of
16 post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil
17 Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other
18 applicable authority. The United States shall be deemed a judgment creditor for purposes
19 of collection of any unpaid amounts of the civil and stipulated penalties and interest.
20 Further, Defendants shall be liable for attorneys' fees and costs incurred by the United
21 States to collect any amounts due under this Stipulation.
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24 11. After receipt of the full settlement amount to be paid by the Defendants,
25 the United States and the Defendants shall execute and file with the Court a stipulation of
26

1 dismissal with prejudice. The United States' Complaint in this action shall be dismissed
2 only upon payment of the entire settlement amount and any other monies due in accordance
3 with this Stipulation.
4

5 12. Each party shall bear its own costs and attorneys' fees in this matter,
6 except as provided in paragraph 10, above.
7

8 13. The undersigned representative of Defendants and the Assistant Attorney
9 General of the Environment and Natural Resources Division or his or her designee each
10 certifies that he or she is fully authorized to enter into the terms and conditions of this
11 Stipulation and to execute and legally bind Defendants and the United States, respectively,
12 to it.
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16 So Ordered this _____ day of _____, 2008.
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19 _____
20 United States District Judge
21 District of Arizona
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1 For Plaintiff The United States of America:

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4 Date

9 May 2008

RONALD J. TENPAS

Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

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10 Date

5/19/08

PATRICIA L. HURST

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May 15, 2008
Date

KEITH TAKATA
Director, Superfund Division
U.S. EPA Region 9

May 14, 2008
Date

MICHELE BENSON
Office of Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Date May 6, 2008

Date _____

[INSERT NAME]

Jodi Shapiro
Vice President, Environmental, Health
and Safety
Motorola, Inc.
1303 E. Algonquin Road
Schaumburg, IL 60196

Date _____

GARY A. JONES
President
SMI Holding LLC
170 Wood Ave. South
Iselin, NJ 08830

Date _____

[INSERT NAME]

For Defendant Motorola Inc.:

Date

[INSERT NAME]

For Defendant SMI Holding LLC:

Date

5/5/08

GARY A. JONES

President SMI
Holding LLC 170 Wood Ave. South
Iselin, NJ 08830

For Defendant GlaxoSmithKline:

Date

[INSERT NAME]

1 For Defendant Motorola Inc.:

2
3
4 Date

[INSERT NAME]

5
6
7 For Defendant Siemens Corporation:

8
9
10 Date

GARY A. JONES
President
SMI Holding LLC
170 Wood Ave. South
Iselin, NJ 08830

11
12
13
14
15 For Defendant GlaxoSmithKline:

16 May 12, 2008

17 Date

[INSERT NAME]

Carol G. Ashe
Vice President and Secretary